

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 790 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

THE STATE OF GUJARAT

Versus

MASCOT PHARMACEUTICAL

Appearance:

MS HANSA PUNANI for Petitioners

MR NJ PARIKH for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/03/2000

CAV JUDGMENT

#. This revision application under section 115 of the Code of Civil Procedure is directed against the order of the Assistant Judge, Ahmedabad (Rural) at Mirzapur in Civil Misc. Appeal No.189/95 thereunder the order of the

Civil Judge (S.D.), Gandhinagar dated 29/9/95 below Exh.5 in Regular Civil Suit No.277/95 (New No.643/95) was reversed. Under the order aforesaid the learned trial court has declined to grant interim relief as prayed for by the plaintiff-respondent in the suit.

#. The facts of the case are that the plaintiff-respondent filed suit for declaration and permanent injunction restraining the defendant-petitioner from recovering the self-ascertained amount of damages to the extent of Rs.43,287=64. The plaintiff-respondent has been awarded a rate contract No. CMSO/DRUGS/RC/140-08/69/83543-893/91.92 dated 3/7/1991 by the defendant-petitioner for supplying Cynocobalamine Injection I.P. each ml. contains An-hydrous Cynocobalamine I.P. 500 meg. in a box of 10 x 10 ml. Glass vials at the rate of Rs.32.50. The rate contract was valid upto 30th June, 1992. The plaintiff-respondent could not supply the aforesaid injections within the stipulated period according to the rate contract. He has given out the reasons that due to the price hike in the duty and as the material is imported item he could not supply the same within the stipulated time according to the contract. It is alleged that the circumstances were beyond its control. The defendant-petitioner gave a notice to the plaintiff-respondent dated 21/9/91 thereunder informed about the risk of purchase made by the defendant-petitioner and suffered damages as a result of non-fulfilling of the contract by the plaintiff-respondent. Under the notice dated 7/12/1993 he was called upon to pay the same. This notice is challenged in regular civil suit under reference. Interim relief as prayed for was not granted by the learned Trial Court but the learned Appellate Court has granted the same. The operative part of the Appellate Court's order reads as under :-

"The respondents hereby restrained from implementing the disputed notice dated 7/12/'93 asking the appellant for making a payment in respect of recovering the self-ascertained amount of damages."

#. This revision application was admitted on 12/3/1997. The impugned order of the court below was stayed to the limited extent in the terms of the following direction :-

"The respondent shall move to concerned Arbitrator under Clause-25 mentioned in Rate Contract Act, dated 3.7.91 for adjudication of liquidated damages within span of two months from

pronouncement of this order".

#. The learned counsel for the defendant-petitioner contended that the contract for supply of injections was given to the plaintiff-respondent and as it has not fulfilled the contract that material has to be purchased by the State of Gujarat from the open market and it has suffered heavy damages. It is the peoples money which has to be paid as the cost of the injection higher than what for the plaintiff-respondent agreed to supply the same.

#. Ms. Hansa Punani, the learned counsel for the defendant-petitioner next contended that otherwise also it is a money matter and the First Appellate Court should not have granted interim injunction restraining thereby the defendant-petitioner from recovering that amount. Lastly it is contended that the direction given by the appellate court for making reference of the dispute to Arbitrator at this stage is wholly perverse.

#. The learned counsel for the respondent relying on two decisions; one is of the apex court and another is of this court contended that in the facts of this case the court has all the power to issue temporary injunction. It has next been contended that without hearing the plaintiff-respondent, the defendant-petitioner has no right to assess the damages, which is alleged to have been suffered and to be paid by the defendant-petitioner. Lastly it is contended that in the contract there is a specific term for referring the dispute to the Arbitrator and the court has rightly ordered so.

#. I have given my thoughtful consideration to the rival contentions made by the learned counsel for the parties.

#. I find sufficient merits in the contention of the learned counsel for the defendant-petitioner that the Appellate Court at this stage could not have given any direction to the defendant-petitioner to refer the disputes to the Arbitrator. The suit has not been filed by the State of Gujarat. The suit is filed by the plaintiff-respondent. In case, there is a clause to resolve the dispute by Arbitration then the plaintiff-respondent should have taken the appropriate step. Though it has filed the suit therein prayer is not made for appointment of arbitrator and reference of the dispute to him. The defendant-petitioner is also not prayed for stay of the suit and reference of the dispute to the Arbitrator. The First Appellate Court was not

within its limits or jurisdiction to give direction to the defendant-petitioner to get this dispute resolved by the Arbitration. The order of the appellate court to this extent is certainly without jurisdiction and the same cannot be allowed to stand. The two decisions on which reliance is placed by the learned counsel for the plaintiff-respondent is of little help to him in this matter. It is a stage where this matter has come up before this court at the interlocutory stage and against interlocutory order.

#. In the matter of the grant of temporary injunction under Order 39 Rule 1 of Code of Civil Procedure, it is not the law that merely on making out a prima facie case the litigant is entitled for the temporary injunction in his favour as a rule or right. It is a discretionary relief and the court may or may not grant the same in favour of the litigant praying for it. While considering the application for grant of temporary injunction as prayed for by the litigant the court has to look into three important aspects and in case where all the three ingredients viz. prima facie case, irreparable injury to be suffered on declining of temporary injunction by the court and balance of convenience favours the grant of the temporary injunction then only the court may have justification to exercise discretionary powers in favour of the litigant. Leaving apart whether the petitioner has prima facie case or not and even if we proceed with assumptions and presumptions that plaintiff-respondent has strong prima facie case in its favour only on this fact alone no temporary injunction could have been granted by the trial court. It is a case where the money dispute is there. The defendant-petitioner has adjudicated its own the amount of damages which it suffered because of the non-fulfilment of the contract in the plaintiff-respondent and these steps are being taken for the recovery of the same from the plaintiff-respondent. This notice is no doubt has been challenged but whether the plaintiff-respondent will succeed in the suit or not an important consideration. At this stage it is difficult to say what ultimately will be the decision in the suit. The learned First Appellate Court has not considered an important aspect that by declining of temporary injunction in favour of the plaintiff-respondent it will not suffer any irreparable injury, which cannot be compensated in terms of money. Amount as demanded under the notice by the defendant-petitioner is recovered still in the eventuality of success of the plaintiff-respondent in the suit, that amount has to be refunded by the defendant-petitioner to the plaintiff-respondent and for

which the court can pass appropriate order. The court can also pass the order awarding the interest. So, in such matters the grant of the temporary injunction is not justified nor it is necessary. The learned counsel for the plaintiff-respondent has failed to satisfy how any irreparable injury of the nature which cannot be compensated in terms of money will be suffered on declining of the temporary injunction by the court below in favour of the plaintiff-petitioner.

##. In the facts of this case, the first part of the order of the First Appellate Court whereunder the defendant-petitioner was restrained from recovering the amount for damages also cannot be allowed to stand. The learned First Appellate Court has not kept in its mind the catena of decisions where the apex court and this court time and again said that unless the court is satisfied that all the three ingredients viz. prima facie case, irreparable loss to be sustained on decline of temporary injunction and balance of convenience also favours the grant of temporary injunction are established, no temporary injunction could have been granted. The Appellate Court has also not taken the note of the fact that it is money matter and where seldom any injury will be caused on declining of the interim injunction by the court in favour of the plaintiff-respondent.

##. As a result of the aforesaid discussion this revision application succeeds and the same is allowed. The order of the First Appellate Court dated 7/3/1996 is quashed and set aside. The rule is made absolute. The plaintiff-respondent is directed to pay Rs.500/= as costs of this revision application to the petitioner.

(S.K.Keshote, J.)

*Pvv